Rockingham Sleepwear, Inc., *and* International Ladies' Garment Workers Union, Upper South Department, AFL–CIO. Case 5–CA–4767

February 24, 1971

DECISION AND ORDER

BY MEMBERS FANNING, BROWN, AND KENNEDY

On November 6, 1970, Trial Examiner Joseph I. Nachman issued his Decision in the above-entitled proceeding, finding that Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, Respondent filed exceptions to the Decision and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions,[1] and recommendations of the Trial Examiner.[2]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Trial Examiner and hereby orders that Respondent, Rockingham Sleepwear, Inc., Elkton, Virginia, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's recommended Order.

[1] Respondent has excepted to certain credibility findings made by the Trial Examiner It is the Board's established policy not to overrule a Trial Examiner's resolutions with respect to credibility unless the clear preponderance of all the relevant evidence convinces us that the resolutions were incorrect *Standard Dry Wall Products, Inc*, 91 NLRB 544, enfd 188 F 2d 362 (C A 3) We find no such basis for disturbing the Trial Examiner's credibility findings in this case

[2] In footnote 22 of the Trial Examiner's Decision, substitute "20" for "10" days.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

JOSEPH I. NACHMAN, Trial Examiner: This proceeding tried before me at Harrisonburg, Virginia, on August 4,[1] with all parties present and represented by counsel, involves a complaint[2] pursuant to Section 10(b) of the National Labor Relations Act, as amended (herein the Act), which as amended at the trial, alleges that in the course of an organizational campaign by International Ladies' Garment Workers Union, Upper South Department, AFL–CIO (herein Union), among the employees of Rockingham Sleepwear, Inc. (herein Respondent or Company), the latter adopted or enforced an unduly broad no-distribution rule, threatened plant closure, and created the impression that it was engaging in surveillance of the Union activities of its employees thereby interfering with the rights guaranteed employees by Section 7 of the Act, and on May 7, discharged and thereafter refused to reinstate Muriel Hinegardner because of her assistance to and activities on behalf of the Union, or because she engaged in concerted activities with other employees of Respondent for the purpose of collective bargaining or mutual aid or protection. By answer, Respondent admitted certain allegations of the Complaint, but denied the commission of any unfair labor practice. For reasonshereafter stated I find certain allegations of the complaint sustained by the evidence and recommended issuance of an appropriate remedial order which will include a provision that Muriel Hinegardner be reinstated with backpay.

At the trial all parties were afforded full opportunity to examine and cross-examine witnesses, to introduce relevant evidence, to argue orally on the record, and to submit briefs. The General Counsel and counsel for the Charging Union presented oral argument which is included in the transcript of evidence. Respondent waived oral argument but filed a brief. The brief and oral arguments have been duly considered. Upon the pleadings, stipulations of counsel, the evidence including my observation of the demeanor of the witnesses while testifying, and the entire record in the case, I make the following:

FINDINGS OF FACT[3]

A. *The Unfair Labor Practices Alleged*

1. Background

Late in 1969 or early in 1970, the Union began a campaign to organize Respondent's employees. The evidence shows that Hinegardner was very active in support of the Union's campaign, attended meetings, signed a union card and gave cards to other employees to sign, distributed Union literature among the employees, and was frequently called at home by other employees for information about

[1] Unless otherwise indicated, all dates are 1970

[2] Issued June 19, on a charge filed May 15, amended May 27 and June 12

[3] No issue of commerce or labor organization is presented The complaint alleges and the answer admits facts which establish these elements. I find those facts to be as pleaded.

the Union. Respondent stipulated that it was opposed to the unionization of its employees, and Plant Manager Harris testified that he was generally aware of Hinegardner's activity on behalf of the Union.[4] The parties stipulated that the Union filed a representation petition on March 10 (Case 5–RC–7185), that a hearing on that petition was held on April 15, that a Decision and Direction of Election issued May 5, and that an election was held June 4.[5]

2. The applicable facts

a. *The alleged interference, restraint, and coercion*

Respondent is engaged in the cutting, sewing, and manufacture of ladies' dresses and related garments. Because the employees come to work from some distance, and there are no adequate eating facilities in or near the plant, all production ceases during the luncheon recess and the employees eat their lunch in the sewing room. Charles Harris, plant manager and an admitted supervisor, was fully aware of this practice, and permitted it to continue. Early in April, when production had ceased and the employees were having lunch in the sewing room, Hinegardner passed out some Union literature to her fellow employees. A few days later she was called to the office where Harris asked her if she had passed out Union literature in the sewing room during the lunch period. When Hinegardner admitted that she had, Harris stated that she was not supposed to do that, and admittedly threatened to fire her if she again engaged in that conduct. After this conversation Hinegardner did not again distribute Union literature in the plant.[6] Hinegardner also credibly testified that Harris continued the aforementioned conversation by stating that he had worked at a plant in Staunton which closed because of the union. When Hinegardner remarked that she thought it was unlawful for an employer to close his operation because of a union, Harris stated that the plant here involved would close if the Union persisted in its efforts to organize the employees. Harris then told Hinegardner that he had been watching her and was impressed by her efficiency, and that he had plans to make her a floorlady.[7] On June 8, employee Myrtle Green reported for work, but found her timecard missing from the rack. Upon inquiry as to the reason for this, Green was told to go to the office and see Harris. At the office Green asked Harris why her card was missing. Harris asked why she took a half day off the preceding Friday. When Green stated that she was sick, Harris replied that he did not believe her; that he knew all the girls like the back of his hand, and knew who was for the Union and knew she was for it. Harris then told Green to go home and come back when she was able to work every day.[8]

b. *The discharge of Hinegardner*

Hinegardner had been employed by Respondent for various periods since 1964. It is undenied that she is among the more proficient workers in the plant.[9] It likewise appears without contradiction that she was a very active prounion employee. That Harris was generally aware of her Union activity is not only admitted but is evident from the fact that she passed out Union literature and cards at the entrance to the plant, of which Harris must have been aware, as well as his conversation with her in April regarding the distribution of literature in the plant during the lunch break.

To keep work flowing properly through its plant, and to make certain that only the proper parts of cut materials are sewed together, Respondent operates under a so-called tracer system; that is, when the various parts of the garment are cut from the cloth, the parts are placed in a bundle. Each bundle is tagged with a series of perforated cards or tickets, there being a separate ticket for each operation that bundle will go through. Each portion of the ticket states the tracer number,[10] lot number, the particular operation to be performed under that ticket, the number of pieces in the bundles, the rate per piece, and the total amount of money involved for that operation. Because employees are normally paid at piece rates, an operator, upon completion of her work on a particular bundle, detaches the ticket for her operation, and at the end of the day forwards all her tickets to the office for payment.[11] The tickets, when attached to the bundle, are arranged in the anticipated sequence that the several operations will be performed, so that the operator need only tear off the last of the group of attached tickets.

As one would expect, it was not uncommon for bundles to reach operators without the ticket for the particular operation.[12] To insure continuity of the operation, and that the operator would be paid for her work, the floorladies were authorized to issue and validate a duplicate ticket for the particular operation, which the operator would turn in at the end of the day, in accordance with usual practice, to receive payment for that work. When approving a duplicate, the floorlady would make a written report of the facts to the office, and it would be the duty of the latter to check all tickets and guard against payment for both the original and the duplicate ticket.

Hinegardner worked on Thursday, April 30, and at the end of that day turned in 10 tickets.[13] She did not work Friday, May 1, or Monday, Tuesday, or Wednesday, May

[4] Additionally, the evidence shows that, on March 2, the Union filed a charge alleging that Respondent terminated Hinegardner and other employees because of their assistance to and support of the Union, and that the Union subsequently withdrew that charge.

[5] Counsel for the General Counsel stated on the record that objections to the election were filed and are still pending before the Regional Director. Counsel also stated that Hinegardner voted a challenged ballot at the election The representation case is not before me I therefore make no findings with respect to any issue in the representation case.

[6] Based on the credited testimony of Hinegardner, and the admissions by Harris that he discussed with Hinegardner her distribution of Union literature in the plant during the lunch period, that she insisted she had the right to make such distribution, but agreed to cease doing so when he threatened to discharge her for it

[7] Harris did not deny that he told Hinegardner that he had plans to make her a floorlady. He did deny that he told Hinegardner that the plant in Staunton closed because of a union, or that the plant here involved would close because of the Union. He admitted that the closing of the Staunton plant was discussed, but claims that the subject was raised by Hinegardner, and that he told her he did not know why that plant closed. To the extent that there is a conflict, I credit Hinegardner

[8] Based on the uncontradicted and credited testimony of Myrtle Green Harris did not deny the statements so attributed to him

[9] Hinegardner testified that she was so told by Harris, and the latter did not deny this statement

[10] This number assures, for example, that the sleeve of a particular size and color of a garment are sewed together with other cut parts for that size and color As the garments are made in a number of sizes, colors, and styles, there are many tracer numbers going through the plant from each cutting

[11] Employees are paid on Thursday for all work performed in the preceding calendar week

[12] Plant Manager Harris admitted that missing tickets were not unusual, and that 25 to 30 duplicate tickets, issued as hereafter described, were validated each week The credited testimony of Myrtle Green also shows that tickets were frequently strewn over the floor, and that at times they would be picked up and hung on a pole or put on a table

[13] Three tickets were tracer 59, three for tracer 60, three for tracer 61, and 1 for tracer 33, bundle 6

4, 5, or 6, at the request of management because of lack of work. During this period the office, in preparing the payroll for the workweek ending May 1, checked the tracer tickets turned in for payment that week, and found that a duplicate ticket had been approved by Floorlady Whitmore for tracer 33, bundle 6, which had been turned in for payment by employee Bankard, and that the original of that ticket had been turned in by Hinegardner. The value of that ticket was $1.70. Harris admits that this information was given him by his office clerical force on Monday, May 4. According to Harris, he thereupon sent for employee Bankard who stated that she had no information how the original ticket got lost, but that she got a duplicate validated by Floorlady Whitmore, and exhibited her own record of work done which showed that she did tracer 33, bundle 6. Still according to Harris, he then sent for Floorlady Whitmore, who confirmed that she had issued and validated a duplicate ticket for tracer 33, bundle 6, as well as other duplicates not here involved. Harris admits that except for his conversation with Hinegardner, hereafter detailed, he made no further investigation of this incident.

Hinegardner returned to work on Thursday, May 7, and worked without incident until about 3:15 that afternoon. At that time paychecks for work performed during the preceding week were distributed. Being of the opinion that her check was short, Hinegardner asked her service girl to arrange for her to see her timesheets for the preceding week in the office. Shortly thereafter Hinegardner received word that Harris wanted to see her in his office. There, Harris told Hinegardner that she had turned in the original ticket for tracer 33, bundle 6, but that the work had been done by another employee under a properly validated duplicate and asked her to explain how this came about. Hinegardner stated that she had no idea how it happened; but that it was her practice to remove the ticket from a bundle only after she performed the work, and that she kept the tickets under her purse until the end of the day when she pasted them on a sheet of paper for transmission to the office; and from this practice she had no reason to believe that she had not performed the operation called for by the ticket in question.[14] Hinegardner inquired who was accusing her of stealing the ticket in question, and Harris replied that no one was making such an accusation. Harris then asked Hinegardner if she had turned in the original ticket for tracer 33, bundle 6, for payment. Hinegardner admitted that she did. Harris then told Hinegardner that this was all the information he wanted, and that she could go.[15] Hinegardner then asked if she was fired, and, when Harris replied in the affirmative, requested that her check for work on May 7 be mailed to her. This concluded the interview.[16]

The following day Hinegardner telephoned Harris and told the latter that she had been "framed" and had a witness to prove that someone else had put the ticket involved on her table; that she had consulted counsel and would sue for defamation of character and file unfair labor practice charges, unless she received satisfaction. When Harris asked what she meant by satisfaction, Hinegardner replied that she meant being called back to work.[17] Admittedly, Harris merely thanked Hinegardner for calling and concluded the conversation without making any other statement. Harris concedes that he made no further investigation of the matter.[18]

Notwithstanding the substantial number of tickets lost from the bundles, the matter of employees making claims for payment on both the original and duplicate did not frequently become a problem. During the approximately 4 years that Harris has been plant manager, he admitted that there were only two incidents that an employee attempted to use a lost ticket to collect for work done by another employee on an authorized duplicate. These incidents were:

1. In late April Respondent had one girl who worked at night on an hourly basis. Although the bundles worked on by this employee had the usual tickets attached, the tickets were meaningless for pay purposes. The girl was directed to destroy the tickets attached to bundles she worked on, but was required to turn in a list of the work done, the purpose of the list being to keep Harris posted for scheduling purposes. According to Harris, he came to the plant late in the evening of April 28, as the girl was about to leave, and she gave him the list of the work she had done, but stated that she neglected to destroy the tickets and asked that he do so. Harris testified that he agreed, but became occupied with other work and forgot about it until the next morning, and when he then went to look for the tickets they were gone. Harris then notified his office clericals to be on the lookout that the missing tickets (a total of seven) did not turn up for payment. According to Harris, one of these tickets appeared on the paysheet of Phyllis Comer on April 29, and the remaining six tickets appeared on her paysheet for April 30.[19] Harris testified that Comer came to work on Friday, May 1, and Monday, May 4, but that, because he was occupied with other duties, he was unable to speak with Comer until late in the day on May 4, and, when he discussed the matter with her at that time, she had no explanation to make and would only say that she did not have time to talk about the matter because she would miss her ride. According to Harris, Comer did not again return to work, but at some later date (time not disclosed), she telephone and admitted that she had taken and presented the tickets for payment, and didn't know why she had done so, and that regarding her conduct as a deliberate act of dishonesty he told Comer that she was discharged as of May 4.

2. The other incident involving attempts to collect for work not performed, to which Harris referred, occurred in late 1967. According to Harris, two sisters employed by Respondent and assigned to perform the same operation had engaged in what Harris described as "a real sweet deal," by one girl doing the work for which the other would make a duplicate ticket, and on the next bundle the sister who made the duplicate would do the work with the other making a duplicate ticket.[20] When Harris discovered what was

[14] Hinegardner admitted that, when she was pasting the tickets on her sheets, she noticed that tracer 33 was included, with her other tickets bearing tracer numbers 59, 60, and 61, and, being aware that the lower numbers were ordinarily performed first, she was curious how a ticket bearing a tracer number 33 got into her other tickets bearing the higher tracer numbers, but she made no inquiry about the matter.

[15] Harris admitted that it was at this point that he concluded that Hinegardner should be terminated.

[16] Hinegardner, while testifying, never stated that she had a positive recollection that she did the work called for by tracer 33, bundle 6. The burden of her testimony was that, as the ticket was among those representing work she did, she had no reason to believe that she had not done that work. On cross-examination, however, Hinegardner admitted that when interviewed by the Board's agent concerning this matter she told the latter that it was her opinion that Floorlady Whitmore got employee Shiflett to put the ticket in question in to the pile of tickets representing the work she had done, and stated that this was still her opinion at the time she testified.

[17] Hinegardner also referred to an apology in front of the clerical employee whom Harris had present at the time of his conversation with Hinegardner on May 7.

[18] While my finding is based on the testimony of Harris, he and Hinegardner are substantially in accord as to what was said on this occasion.

[19] Harris claimed that he had ascertained the value of the seven tickets, but at the time he testified did not recall what the amount was.

[20] Harris did not describe the alleged scheme in greater detail, nor did he explain how the girls could present a duplicate ticket without getting it validated by a floorlady or it being checked by the office.

taking place he called both girls in for a conference, and, according to his testimony, they could not understand how the duplicate tickets got on their sheets and offered to work that day for nothing if Harris would "just let it go." Harris admitted that he did not discharge the girls for this conduct, which involved a total of about 10 tickets, but, as a layoff of some 35 girls was to take place the following week, he decided to include them in that layoff, "with the thought in mind that I wouldn't call them back any time soon." Harris testified that all employees involved in the layoff, except the two sisters, were called back within 3 weeks, and he admitted that he rehired one of the sisters after a period "better than a year" because she was a good operator for whom he had need, and the other sister he reemployed approximately 2 weeks prior to the trial of this case on August 4, almost 3 years after her layoff.

B. *Contentions and Conclusions*

1. The 8(a)(1) allegations

(a) I find and conclude that Respondent violated Section 8(a)(1) of the Act by Harris' statement to Hinegardner that she would have to cease distributing Union literature in the plant during the lunch period, when production was not in progress and the sewing area was being used as a lunchroom, and that she would be discharged if she did not cease that activity. The Board has long held, with court approval, that the organizational rights of employees requires that except under unusual circumstances, which have not been shown to exist here, employees must be afforded the right to distribute union literature on the employer's premises, and that such right may be limited only by the requirement that the distribution be only in nonwork areas of the plant, during an employee's nonworktime. *Stoddard-Quirk Manufacturing Co.,* 138 NLRB 615, 621. It is true that in the instant case the sewing room is, for the greater portion of the day, a work area. However, because a significant number of employees live too great a distance from the plant to go home for lunch, and other satisfactory facilities are unavailable, a substantial number of the employees have, with Harris' full knowledge and approval, used the sewing room as the place to have their lunch, so that in effect the sewing room, for the duration of the lunch period, is not a "work area" within the meaning of *Stoddard-Quirk, supra,* but a lunchroom where distribution may not be lawfully prohibited. As Respondent has made no showing of any special or unusual circumstances which would justify a prohibition against distribution in the lunch area during the lunch period, and there being no question that Hinegardner was not at work during the lunch period, I must and do find and conclude that, by reprimanding her for distributing Union literature during the lunch period and threatening to discharge her if she did not cease such conduct, Respondent interfered with, restrained, and coerced Hinegardner in the exercise of rights protected by Section 7 of the Act, and hence violated Section 8(a)(1) of the Act.

(b) I also find and conclude that by Harris' statement to Hinegardner that the plant in which he formerly worked had closed because a union sought to organize it, and that the plant here involved would close if the Union persisted in its organizational efforts, Respondent interfered with, restrained, and coerced its employees in the exercise of their Section 7 rights and violated Section 8(a)(1) of the Act.

(c) Additionally, I find and conclude that Respondent violated Section 8(a)(1) of the Act by Harris' statement to employee Green that he knew all the girls like the back of his hand, and knew which of them were for the Union, and that he knew Green was for it, because he thus created the impression that Respondent had engaged in surveillance of Green's Union activities. *Gordon Mills, Inc.,* 145 NLRB 883, 886; *A. C. Rochat Company,* 150 NLRB 1402, 1409; *Sanitary Bag & Burlap Company, Inc.,* 162 NLRB 1648, 1650.

2. The 8(a)(3) allegations

The critical issue on this branch of the case is Respondent's motive in terminating Hinegardner. If, as Respondent contends, it discharged Hinegardner *solely and only* because she attempted to collect payment for work she did not perform, it is plain that no violation of the Act resulted. On the other hand, if Hinegardner's alleged attempt to collect for work not performed was a mere pretext, and her discharge was motivated, even in part, by the fact that she assisted and supported the Union, then her discharge was plainly a violation of Section 8(a)(3) and (1) of the Act. Whether the discharge here involved falls in the one category or the other is to be determined from the circumstances involved, and the proper inferences to be drawn therefrom. Upon full consideration of the entire record in the case, I am convinced, and therefore find and conclude, that in discharging Hinegardner Respondent was motivated by the fact that she has assisted and supported the Union, and that the alleged attempt to collect for work not performed was a mere pretext seized upon in an effort to obscure the true motive for the discharge and to give it apparent legitimacy. I reach this conclusion upon the totality of the following considerations:

1. Hinegardner was an admittedly satisfactory employee who had worked for Respondent for various periods in the past 6 years.

2. There is no dispute and the evidence leaves no room for doubt that Hinegardner was very active in support of the Union, and that Harris was aware of that fact.

3. That Respondent opposed unionization of its employees is stipulated.

4. In late March or early April, Harris threatened Hinegardner with discharge if she persisted in distributing Union literature during her lunch period, under circumstances which I have found constituted a violation of the Act.

5. The large number of lost tracer tickets and the manner in which employees presented their tickets for payment certainly leaves ample room for an honest error, and Harris must have been aware of that fact. While I am convinced, and therefore find that Hinegardner did not do the work represented by the ticket in question, and consequently was not entitled to payment for the same, I am equally convinced and accordingly find that she presented that ticket in the honest albeit mistaken belief that she had done that work.

6. Although Harris admits that he was informed on May 4 that Hinegardner had presented the original of the ticket in question for payment, he made no effort to communicate with her during the 3 days she was not at work, and permitted her to work the entire day on May 7, without saying anything to her regarding the matter. This is not the normal reaction of an employer who is convinced that he must take action against an employee who has engaged in an act of deliberate dishonesty.

7. Harris admitted that when he called Hinegardner to his office, he had not made a decision to discharge her, which itself indicates that he did not regard the incident as particularly serious. He claims that he made the decision to discharge her in the course of the interview but, just what took place to cause him to reach that conclusion, he did not explain except to say that when she admitted that she had

presented the ticket in question for payment (a fact he was well aware of before his interview with her), he told her that was all he wanted to know and asked if she wanted her check immediately or whether it could be mailed to her.

8. Hinegardner called Harris the following day and according to Harris stated that she had every reason to believe that she had been "framed," that she had a witness to prove that someone else put the ticket in question on her table, and that unless the matter was straightened out she was going to sue for defamation of character; he merely thanked her for calling and hung up the phone. Thus, by his own statement, Harris made no attempt to investigate whether Hinegardner's claim might not in fact be true. His failure to conduct a fair investigation of that claim is itself evidence of a discriminatory intent. *J. W. Mortell Company,* 168 NLRB 435, 452; *Norfolk Tallow Co., Inc.,* 154 NLRB 1052, 1059; *Shell Oil Company* v. *N.L.R.B.,* 128 F.2d 206, 207 (C.A. 5).

9. Harris' action in precipitously discharging a valued employee of substantial seniority, who had not theretofore engaged in any improper conduct, over an incident involving the insignificant sum of $1.70, and which occurred under circumstances strongly indicating the possibility of an honest mistake, is not the action of a normal employer, and itself suggests that the discharge was motivated by some factor other than the alleged dishonesty of the employee involved. This is particularly true when Harris' handling of the incident involving Hinegardner is compared with the manner in which he handled the case of the two sisters who engaged in the "real sweet deal," and whom he did not discharge but merely included in a subsequent layoff, and after a period of time reemployed both of them, when by his own admission the scheme they engaged in was deliberate and involved a greater number of tickets and clearly a greater sum of money.

In sum, I find that Respondent's claim that Hinegardner was discharged because she allegedly attempted to collect for work not performed simply does not stand up under scrutiny. Rather, the totality of the aforementioned factors convince me, and I find, that Harris discharged Hinegardner on May 7, because, at least in part, he wanted to eliminate this strongly prounion employee as a possible voter in the Board election, notice of which issued by the Regional Director on May 5, and that the alleged attempt to collect for work not performed, the facts of which came to light fortuitously at an apparently opportune moment, is simply a pretext seized upon in an attempt to obscure the true motive of the discharge, and to give it apparent legitimacy. As the Court of Appeals for the Ninth Circuit stated in *Shattuck Denn Mining Corporation* v. *N.L.R.B.,* 362 F.2d 466, 470:

> If he [the trier of fact] finds that the stated motive for a discharge is false, he certainly can infer that . . . the motive is one that the employer desire to conceal—an unlawful motive—at least where, as in this case, the surrounding facts tend to reinforce that inference.

Accordingly, I find and conclude that Hinegardner's discharge was discriminatorily motivated, and hence violative of Section 8(a)(3) and (1) of the Act.

Upon the foregoing findings of fact, and the entire record in the case, I make the following:

CONCLUSIONS OF LAW

1. Respondent is an employer within the meaning of Section 2(2) of the Act, and is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of section 2(5) aof the Act.

3. By the conduct set forth in section B, 1, hereof, Respondent interfered with, restrained, and coerced its employees in the exercise of rights guaranteed by Section 7 of the Act, and thereby engaged in, and is engaging in, unfair labor practices proscribed by Section 8(a)(1) of the Act.

4. By discharging Muriel Hinegardner on May 7, 1970, because of her assistance to and support of the Union, Respondent discriminated against her in regard to her hire, or tenure of employment, discouraging membership in a labor organization, and thereby engaged in, and is engaging in, unfair labor practices proscribed by Section 8(a)(3) and (1) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent interfered with, restrained, and coerced its employees in the exercise of rights protected by Section 7 of the Act, I shall recommend that it be required to cease and desist from such conduct and take certain affirmative action designed and found necessary to effectuate the policies of the Act. The unfair labor practices found being of the character which go to the very heart of the Act, an order requiring Respondent to cease and desist from in any manner infringing upon employee rights is warranted, and I shall so recommend. *N.L.R.B.* v. *Entwistle Mfg. Co.,* 120 F.2d 532 (C.A. 4); *California Lingerie Inc.,* 129 NLRB 912, 915.

Having also found that Respondent discriminatorily discharged Muriel Hinegardner, I shall recommend that it be required to offer her immediate, full, and unconditional reinstatement to her former job or, if that job no longer exists, to a substantially equivalent one, without prejudice to her seniority and other rights, privileges, or working conditions, and make her whole for any loss of earnings suffered by reason of such discrimination, by paying her a sum of money equal to the amount she would have earned from the date of the discrimination against her to the date of Respondent's offer to reinstate her as aforesaid, less her net earnings during that period, in accordance with the Board's formula set forth in *F. W. Woolwroth Company,* 90 NLRB 289, with interest thereon at the rate of 6 percent per annum, as set forth in *Isis Plumbing & Heating Co.,* 138 NLRB 716. It will also be recommended that Respondent be required to preserve and upon request make available to the authorized agents of the Board all records necessary or useful in determining compliance with the Board's Order, or in computing the amount of backpay due thereunder.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, I hereby issue the following recommended:

ORDER

Rockingham Sleepwear, Inc., Elkton, Virginia, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Promulgating, maintaining, enforcing, or applying any rule or regulation prohibiting employees during their nonworking times from distributing Union literature in nonworking areas of its property.

(b) Threatening employees with plant closure if they continue with their efforts to secure Union representation.

(c) Making any statements or engaging in any conduct

from which employees may reasonably infer that it is engaging in surveillance of their Union activities.

(d) Discouraging membership in International Ladies' Garment Workers Union, Upper South Department, AFL–CIO, or any other labor organization of its employees, by discriminatorily discharging or in any other manner discriminating against any employee in regard to the hire, tenure, or other terms or conditions of employment.

(e) In any other manner interfering with, restraining, or coercing employees in the exercise of their right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

2. Take the following affirmative action designed and found necessary to effectuate the policies of the National Labor Relations Act, as amended:

(a) Offer Muriel Hinegardner immediate, full, and unconditional reinstatement to her former job or, if that job no longer exists, to a substantially equivalent one, without prejudice to her seniority or other rights, privileges, or working conditions, and make her whole for any loss of earnings suffered, in the manner set forth in the section hereof entitled "The Remedy."

(b) Notify Muriel Hinegardner if presently serving in the Armed Forces of the United States of her right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act, as amended, after discharge from the Armed Forces.

(c) Preserve and, upon request, make available to authorized agents of the National Labor Relations Board, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary or useful in determining compliance with this Order, or in computing the amount of backpay due, as herein provided.

(d) Post at its Elkton, Virginia, plant copies of the notice attached marked "Appendix."[21] Copies of said notice, on forms provided by the Regional Director for Region 5 of the National Labor Relations Board (Baltimore, Maryland), shall, after being signed by an authorized representative, be posted immediately upon receipt thereof and maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the aforesaid Regional Director, in writing, within 20 days from the date of receipt of this Decision, what steps it has taken to comply herewith.[22]

[21] In the event no exceptions are filed as provided by Section 102 46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, recommendations, and Recommended Order herein shall, as provided in Section 102 48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and order, and all objections thereto shall be deemed waived for all purposes. In the event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall be changed to read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board"

[22] In the event this Recommended Order is adopted by the Board, this provision shall be modified to read. "Notify the aforesaid Regional Director, in writing, within 10 days from the date of this Order, what steps it has taken to comply herewith

APPENDIX

Notice to Employees

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

AFTER A FULL TRIAL IN WHICH ALL SIDES HAD THE OPPORTUNITY TO PRESENT THEIR EVIDENCE, THE NATIONAL LABOR RELATIONS BOARD HAS FOUND THAT WE, ROCKINGHAM SLEEPWEAR, INC., VIOLATED THE NATIONAL LABOR RELATIONS ACT, AND ORDERED US TO POST THIS NOTICE. WE INTEND TO CARRY OUT THE ORDER OF THE BOARD, THE JUDGMENT OF ANY COURT, AND ABIDE BY THE FOLLOWING:

The act gives all employees these rights:

To organize themselves
To form, join, or help unions
To act together for collective bargaining or other mutual aid or protection
To refuse to do any or all of these things.

WE WILL NOT do anything to interfere with you in the exercise of these rights. All our employees are free to belong to the Garment Workers Union, or any other union, or not to belong to any union.

WE WILL NOT promulgate, maintain, enforce, or apply any rule or regulation prohibiting our employees during their nonworking time from distributing Union literature in nonworking areas of our plant.

WE WILL NOT threaten employees with plant closure if they continue with their efforts to secure Union representation.

WE WILL NOT make any statement or engage in any conduct from which you may reasonably infer that we are engaging in surveillance of your Union activities.

WE WILL NOT fire or otherwise discriminate against any employee because he or she joins, assists, or supports a union.

As it has been found that we violated the law when we fired Muriel Hinegardner,

WE WILL offer her old job back to her if the same exists, and if not a substantially equivalent job, and we will make up the pay she lost, together with 6 percent interest.

WE WILL notify Muriel Hinegardner if presently serving in the Armed Forces of the United States of her right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act, as amended, after discharge from the Armed Forces.

ROCKINGHAM SLEEPWEAR, INC
(Employer)

Dated By

(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Federal Building, Room 1019, Charles Center, Baltimore, Maryland 21201, Telephone 301–962–2822.